IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN RALSTON, JR.,

R., :

Plaintiff

: Case No. 3:10-cv-8-KRG-KAP

JEFFREY A. BEARD, et al.,

Defendants

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C.§ 636(b)(1), and Local Rule 72 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on August 1, 2012, docket no. 67, recommending that the remaining defendant's motion for summary judgment, docket no. 49, be granted.

The parties were notified that, pursuant to 28 U.S.C.§ 636(b)(1), they had fourteen days to file written objections to the Report and Recommendation. Plaintiff filed objections, docket no. 68, that add the allegation of fact that the remaining defendant, Dr. Untracht, was fired by the Pennsylvania Department of Corrections after the incident complained of in the complaint. Being fired, however, is just as consistent with unprofessional conduct as it is with a violation of the Eighth Amendment. The other points mentioned in the objections, for example plaintiff's desire for an independent medical examination under Fed.R.Civ.P. 35, are not relevant to the issues raised in the motion.

After <u>de novo</u> review of the record, the Report and Recommendation, and the timely objections thereto, the following order is entered:

AND NOW, this 28 day of August, 2012, it is

ORDERED that the defendant's motion for summary judgment, docket no. 49, is granted and plaintiff's complaint is dismissed. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

KIM R. GIBSON,

UNITED STATES DISTRICT JUDGE

Notice to counsel of record by ECF and by U.S. Mail to:

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